

REMARKS

In the Office Action the Examiner objected to the element shown in figure 6 of the drawings as being inconsistent with that shown in figure 2. The Examiner also made various objections to the specification and abstract. Regarding the claims, the Examiner rejected claims 1, 2, 4 and 5 under 35 U.S.C. §102(b) as being anticipated by Kawamoto. Claims 3, 8 and 9 were likewise rejected under 35 U.S.C. §103(a) as being unpatentable over Kawamoto. The Examiner rejected claims 6 and 7 under 35 U.S.C. §103(a) as being unpatentable over Kawamoto in view of Holmes. Claims 10-18, 21 and 23-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kawamoto in view of Petley. Finally, claims 19, 20 and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kawamoto in view of Petley and Holmes. Applicant respectfully requests reconsideration of these objections and rejections.

Drawings

Applicant has submitted a new drawing page with this amendment showing a revised figure 6.

Specification

Applicant appreciates and thanks the Examiner for the close attention given to specification. This amendment addresses the typographical and grammatical errors detailed in paragraphs 2-4 of the Office Action.

Claim Objections

Claim 5 has been amended so that it now properly depends from claim 4. Applicant also acknowledges that the Examiner has renumbered original claims 22 (22)-27 as 23-28. In addition, Applicant has now amended claims 25 and 26 to ensure that they depend from the appropriate claim.

Claim Rejections

In the amendment, claims 1, 10 and 21 have been amended to indicate the exhaust port has an area less than the area of the open end of the exhaust discharge chamber. Accordingly, claims 2 and 3 have been canceled and incorporated into claim 1. New claims 29-33 have also been added.

Claim 3 was not rejected under 35 U.S.C. §102(b). Since claim 1 has now been amended to include the limitations of claims 3, Applicant submits that the rejection of claims 1, 4 and 5 pursuant to that section is now moot.

Regarding amended claims 1, 10 and 21, Applicant submits that the cited prior art does not evidence a *prima facie* case of obviousness. Specifically, in rejecting claims under 35 U.S.C. §103, the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. *See In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A *prima facie* case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. *See In re Lintner*, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is *prima facie* obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. *See In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on §103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The Examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. *See In re Warner*, 379

F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). The Federal Circuit has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. *See, e.g., Grain Processing Corp. v. American Maize-Prods. Co.*, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

When determining obviousness, "the [E]xaminer can satisfy the burden of showing obviousness of the combination 'only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.'" *In re Lee*, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). "Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). "Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact." *Dembiczak*, 175 F.3d at 999-1000, 50 USPQ2d at 1617, citing *McElmurry v. Arkansas Power & Light Co.*, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993). Further, as pointed out by the Federal Circuit, one must first determine the scope of the claim. "[T]he name of the game is the claim." *In re Hiniker Co.*, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Therefore, we look to the limitations of independent claim 8.

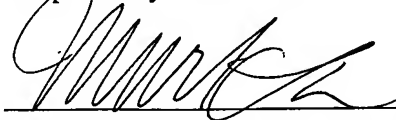
In this case, the Examiner has rejected claims 3, 8 and 9 based entirely on opinion. Stated differently, the Examiner has acknowledged that Kawamoto does not disclose the concept of an exhaust port that has an area less than the area of the open end of the exhaust discharge chamber. However, the Examiner has nevertheless engaged in hindsight reconstruction and

rejected claims 3, 8 and 9 absent any supporting evidence. As such, Applicant respectfully submits that there is no objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to look to the concept of using an exhaust port has an area less than the area of the open end of the exhaust discharge chamber. Rather, Applicant submits that the art would not favor a system designed to "back-up" exhaust over one with an exhaust port having an equal or wider/greater area that could assist with the transmission of the greatest amount of exhaust possible to the atmosphere. Therefore, Applicant respectfully requests reconsideration of the rejection to claims 1, 4-28.

New claim 29 is directed to an adapter that has a first and a second exhaust passage. The first exhaust passage extends in a first direction from the discharge opening to the second passage. The second passage extends in a second direction, which is opposite the first direction, and then opens to the atmosphere. In addition, the exhaust port may communicate exhaust directly to the atmosphere. Applicant respectfully submits that the prior art does not anticipate or teach or suggest and adapter comprising such elements.

Therefore, in view of the above amendment and remarks, Applicant submits that the application is now in proper form for allowance and publication.

Respectfully submitted,



Mark D. Schneider, Reg. No. 43,906
Gifford, Krass, Groh, Sprinkle,
Anderson & Citkowski, P.C.
2701 Troy Center Drive, Suite 330
P.O. Box 7021
Troy, MI 48007-7021
(248) 647-6000

Attorney for Applicant

Serial No. 10/690,360

Reply to Office Action of October 6, 2005



CERTIFICATE OF MAILING BY "EXPRESS MAIL"

"EXPRESS MAIL" MAILING LABEL NUMBER EV669542532US

DATE OF DEPOSIT March 3, 2006

I hereby certify that this paper or fee (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service "Express Mail Post Office To Addressee" Service under 37 CFR 1.10 on the date indicated above and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Judith T. Lange
Judith T. Lange